

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: CHRYSLER-DODGE-JEEP
“ECODIESEL” MARKETING, SALES
PRACTICES, AND PRODUCTS
LIABILITY LITIGATION

| Case No: MDL No. 17-MD-2777-EMC

**[PROPOSED] PRETRIAL ORDER NO. 14
STIPULATION AND ORDER RELATING TO
DEPOSITION PROTOCOL**

The Honorable Edward M. Chen

I. GENERAL PROVISIONS

This Order applies to the following Parties to the Action: (a) the consumer and reseller dealer class plaintiffs (“Class Plaintiffs”); (b) the Department of Justice on behalf of the United States Environmental Protection Agency (hereinafter the “United States”) (together with the Class Plaintiffs, “Plaintiffs”); (c) Fiat Chrysler Automobiles N.V., FCA US LLC, V.M. Motori S.p.A., V.M. North America, Inc., and Sergio Marchionne (collectively, the “FCA” Defendants); and (d) Robert Bosch, LLC and Robert Bosch GmbH (collectively, the “Bosch Defendants”) (together with the FCA Defendants, “Defendants”).¹ This Order provides the protocols applicable to depositions of all fact witnesses, including depositions pursuant to Fed. R. Civ. P. 30(b)(6) and depositions of Non-Parties. Nothing in this Order will preclude any Party or witness from

¹ Unless otherwise specified, all capitalized terms not otherwise defined herein shall have the meanings ascribed to them in Pretrial Order No. 10: Stipulated Protective Order (Docket No. 212) (“PTO 10”).

1 seeking to modify it later for good cause shown; prior to doing so, however, counsel will meet
2 and confer among themselves in a good-faith effort to reach agreement as to the appropriate scope
3 of any modifications or revisions to this Order.

4 **II. GOVERNING LAW**

5 Discovery will be governed by the applicable provisions of the Federal Rules of Civil
6 Procedure and the Local Rules of the U.S. District Court for the Northern District of California
7 (the “Local Rules”), except as otherwise provided herein or in any other Order. Unless
8 specifically modified herein, nothing in this Order may be construed to abrogate, modify, or
9 enlarge the Federal Rules of Civil Procedure or the Local Rules. This Order does not supersede
10 prior pretrial orders entered in this Action.

11 To the extent that this Order conflicts, or is alleged to conflict, with rights or protections
12 afforded by the national laws or regulations of any foreign country or international treaty, the
13 witness or Party claiming those rights and protections will meet and confer with the Parties
14 regarding a resolution of the alleged conflicts. If the Parties cannot reach agreement, the issue(s)
15 must be submitted promptly for judicial resolution.

16 **III. DEPOSITIONS**

17 **A. Deposition Point Persons**

18 A single Point Person shall be designated by each of (i) the Plaintiffs’ Steering
19 Committee; (ii) the United States; (iii) counsel for the FCA Defendants; and (iv) counsel for the
20 Bosch Defendants (collectively, “Point Persons”). Depositions and matters related to depositions
21 shall be coordinated by the Point Persons. For a notice scheduling a deposition to be effective, it
22 must be sent by email to all Point Persons. Point Persons must be designated within fifteen (15)
23 days after entry of this Order, and thereafter, if necessary, upon prompt notice to all Point
24 Persons, a Party may elect to name a different Point Person at any time during discovery.

25 **B. Number of Depositions**

26 Plaintiffs may, collectively, take up to seventy (70) depositions of the FCA Defendants
27 and Bosch Defendants, collectively, unless otherwise agreed to by the Parties or ordered by the
28 Court.

1 Defendants may, collectively, take up to seventy (70) depositions of Plaintiffs, unless
2 otherwise agreed to by the Parties or ordered by the Court; provided, however, that Defendants
3 shall take no more than ten (10) depositions of the United States.

4 A witness may be deposed in his or her individual capacity only once in this Action,
5 unless (i) otherwise agreed to by the Parties in writing; (ii) the witness has been deposed only on
6 issues related to the preservation of evidence or class certification pursuant to Paragraph 4.F.i. of
7 Amended Pretrial Order No. 12: Stipulated Discovery Schedule (“PTO 12”) (Docket No. 227); or
8 (iii) authorized by an order of the Court upon a showing of good cause by the Party seeking the
9 additional deposition. In the event a witness is deposed on issues related only to the preservation
10 of evidence or class certification pursuant to Paragraph 4.F.i. of PTO 12, that witness may be
11 deposed in his or her individual capacity on issues unrelated to preservation or class certification
12 a second time in this Action. The Parties shall undertake reasonable efforts to avoid deposing the
13 same witness twice. The Parties reserve the right to move the Court for a protective order
14 opposing the second deposition of a witness.

15 Counsel for all Plaintiffs shall confer before serving any notice of deposition to a witness,
16 and counsel for all Defendants shall confer before serving any notice of deposition to a witness.

17 If a Party wishes to conduct additional depositions, the Parties shall meet and confer to
18 determine if an agreement can be reached on the number of additional depositions. If the Parties
19 are unable to agree on the number of additional depositions, the dispute shall be submitted
20 promptly to the Court for resolution.

21 C. **Rule 30(b)(6) Depositions**

22 Counsel for all Plaintiffs shall confer before serving any Rule 30(b)(6) notice to any
23 corporate Defendant, and counsel for all Defendants shall confer before serving any Rule 30(b)(6)
24 notice to any corporate Plaintiff (including the United States).

25 The Parties may serve a reasonable number of Rule 30(b)(6) deposition notices to each
26 corporate Party. The deposing Party(ies) will make a good-faith effort to include in each
27 deposition notice all topics concerning the subject matter category for which the deposing
28 Party(ies) seeks testimony in that notice (without prejudice to serving additional Rule 30(b)(6)

1 notices for topics concerning the subject matter category if the deposing Party(ies) learns of
2 additional topics of which it was not previously aware for good reason). Absent good cause or
3 agreement of the noticed Party, no Rule 30(b)(6) deposition notice may include topics covered by
4 a prior Rule 30(b)(6) deposition notice to the same corporate Party.

5 If a Party wishes to depose a Rule 30(b)(6) corporate representative in his or her
6 individual capacity, the depositions (individual and corporate capacity) may be, but are not
7 required to be, consolidated. In the event that the Parties agree to consolidate the depositions, the
8 noticing Party nevertheless will be entitled to a separate time allotment, as detailed below in
9 Section III.G (Length of Examination), for each deposition. The noticing Party will clearly
10 indicate when the Rule 30(b)(6) deposition has ended.

11 **D. Deposition Notices**

12 **1. Notice of Deposition Procedures**

13 A deposition notice may be served at any time, so long as it complies with Pretrial Order
14 No. 12: Stipulated Discovery Order (Docket No. 227), provided that it is served sufficiently in
15 advance of the close of fact discovery so that the deposition takes place prior to the close of fact
16 discovery. Absent extraordinary circumstances, Point Persons and counsel for a proposed witness
17 should confer at least seven (7) days prior to noticing a deposition in an effort to schedule
18 depositions for mutually convenient dates, times, and locations. Point Persons and counsel for a
19 proposed witness are expected to cooperate and coordinate the scheduling of depositions. To the
20 extent that a proposed witness is unable to be deposed on the noticed date of his or her deposition,
21 Point Persons and counsel for that witness will promptly confer to discuss alternative dates and/or
22 the potential for a substitute witness. To ensure the expeditious progress of the Action, in the
23 event that the Point Persons and counsel for the witness are unable to reach agreement, the
24 noticing Party may notice the deposition in accordance with this Order; should any other Party or
25 the witness maintain a need for relief thereon, such request for relief shall be submitted promptly
26 for judicial resolution.

27 Absent exigent circumstances, agreement of the Parties, or a Court order to the contrary,
28 fact depositions of witnesses residing in the United States must be noticed at least thirty (30) days

1 in advance, and foreign witnesses must be noticed at least forty-five (45) days in advance, with
2 notice served upon counsel in accordance with Section III.A (Deposition Point Persons). Absent
3 exigent circumstances, agreement of the Parties, or a Court order to the contrary, notice of a Rule
4 30(b)(6) deposition must be served at least forty-five (45) days in advance, with notice served
5 upon counsel in accordance with Section III.A (Deposition Point Persons). Any objections to a
6 Rule 30(b)(6) deposition notice shall be served no later than fourteen (14) days after the notice is
7 served. The Parties shall meet and confer concerning any such objections in advance of the Rule
8 30(b)(6) deposition.

9 **2. Contents of Notice**

10 Each deposition notice (except for a Rule 30(b)(6) deposition notice) shall include the
11 name of the proposed witness. Each deposition notice shall include contact information for the
12 noticing party's Point Person so that interested counsel may obtain information regarding the
13 deposition from that Point Person. This Order shall be referenced in any Party or Non-Party
14 subpoena or deposition notice issued after the effective date of this Order. If the deposition is to
15 be recorded by video, the notice shall so state. If the notice asks the witness to produce, or if the
16 witness may be asked about, documents that may contain Confidential Information or Highly
17 Confidential Information, PTO 10 shall be referenced in the notice.

18 **E. Attendance**

19 **1. Who May Be Present**

20 Unless otherwise ordered or agreed by the Parties, and subject to the requirements of PTO
21 10, only the following persons may attend depositions (either in person or remotely): the witness,
22 and counsel for the witness; Point Persons; a reasonable number of members and employees of
23 the Plaintiffs' Steering Committee and of Defendants' Counsel and their firms; a reasonable
24 number of attorneys for the United States on behalf of EPA; attorneys specially engaged by a
25 Party for purposes of the deposition; the Parties or their respective representatives (including In-
26 House Counsel and EPA Counsel); experts or non-testifying consultants; and court reporters,
27 videographers, and litigation technicians/consultants.

28 If a witness is being examined about any document designated Confidential or Highly

1 Confidential pursuant to PTO 10, any person to whom disclosure is not authorized under PTO 10
2 shall be excluded while the examination occurs and shall not receive a copy of that portion of the
3 transcript.

4 The Parties may agree to permit attendance of a person who does not fall within any of the
5 categories set forth above. Upon application, and for good cause shown, the Court may also
6 permit attendance by a person who does not fall within any of the categories set forth above.

7 **2. Unnecessary Attendance**

8 Unnecessary attendance by Counsel – either in person or by telephone – is discouraged.
9 Counsel who have only marginal interest in a proposed deposition or who expect their clients'
10 interests to be adequately represented by other Counsel are encouraged not to attend. The issue of
11 compensation of counsel for attendance at depositions is addressed in PTO 4 at Section I.A
12 (Compensable Common Benefit Work).

13 **3. Notice of Intent to Attend a Deposition**

14 Any Counsel who intends to attend a deposition noticed in this Action telephonically or in
15 person, other than the Plaintiffs Steering Committee, the United States, counsel for the FCA
16 Defendants, and counsel for the Bosch Defendants, should advise the Point Person for the
17 noticing party not fewer than fifteen (15) days prior to the deposition, whenever feasible. The
18 Point Persons will then confer regarding the expected attendance and make a final determination
19 not fewer than five (5) business days prior to the scheduled date as to who may attend the
20 deposition in person and remotely.

21 **4. Noticing and Participating in Depositions Remotely**

22 **a. Noticing Telephonic Depositions**

23 A Party may indicate in its notice of deposition that it wishes to conduct the deposition by
24 telephone. Unless an objection is filed and served within ten (10) days after such notice is
25 received, the Parties shall be deemed to have stipulated to a telephonic deposition pursuant to
26 Fed. R. Civ. P. 30(b)(4).

27 **b. Remote Participation**

28 Any person permitted by Section III.E.1 (Who May Be Present) to attend a deposition,

1 other than the witness (unless the deposition was noticed pursuant to Section III.E.4.a (Noticing
2 Telephonic Depositions)), may do so remotely by telephone. The Party that noticed the
3 deposition shall provide a teleconference number for the use of any person who will attend
4 remotely. Any person seeking to attend remotely is responsible for connecting to the
5 teleconference. Any person who participates remotely must sign Exhibit A to PTO 10, unless that
6 person is already bound by PTO 10. No person attending remotely shall record the deposition by
7 any video or audio means. Persons participating remotely must identify all persons attending at
8 the deposition remotely with them, such persons being subject to the restrictions on attendance set
9 forth in this Order, including the requirement to sign Exhibit A to PTO 10, if necessary.

10 Absent extenuating circumstances, such as weather delay or physical restriction on travel,
11 Counsel participating in a deposition remotely (other than a deposition conducted pursuant to
12 Section III.E.4.a (Noticing Telephonic Depositions)) are not permitted to conduct examination of
13 the witness. Counsel participating in a deposition remotely are permitted to make objections,
14 subject to the restrictions and conditions of Section III.J (Objections and Instructions Not to
15 Answer). The issue of compensation of counsel for attendance at depositions is addressed in PTO
16 4 at Section I.A (Compensable Common Benefit Work).

17 **F. Conduct of Depositions**

18 **1. Sequence of Examination Noticed by Plaintiffs**

19 If the deposition was noticed by the Plaintiffs' Steering Committee, the questioning of the
20 witness will be conducted in the following sequence: (i) the examiner for Plaintiffs' Steering
21 Committee; (ii) the examiner for the United States; (iii) the primary examiner selected by
22 Defendants; (iv) the examiner for the other Defendant; (v) individual counsel for the witness, if
23 any, other than counsel identified above; and (vi) any re-cross by (i)-(ii), *supra*, and in the event
24 of a Non-Party deposition, by (iii)-(iv), *supra*, to the extent the examiner(s) have not exceeded the
25 time limitations set forth in Section III.G (Length of Examination) of this Order. If the deposition
26 was noticed by the United States, the questioning of the witness will be conducted in the
27 following sequence: (i) the examiner for the United States; (ii) the examiner for Plaintiffs'
28 Steering Committee; (iii) the primary examiner selected by Defendants; (iv) the examiner for the

1 other Defendant; (v) individual counsel for the witness, if any, other than counsel identified
2 above; and (vi) any re-cross by (i)-(ii), *supra*, and in the event of a Non-Party deposition, by (iii)-
3 (iv), *supra*, to the extent the examiner(s) have not exceeded the time limitations set forth in
4 Section III.G (Length of Examination) of this Order. For each group (*i.e.*, Plaintiffs' Steering
5 Committee; United States; FCA Defendants; Bosch Defendants), questioning at a deposition will
6 be conducted by one examiner for that group; in the event, however, that a group believes that the
7 circumstances of a particular deposition require more than one examiner for that group, the
8 Parties shall meet and confer in advance of the deposition. If necessary following that meet-and-
9 confer process, the group seeking to use an additional examiner shall seek relief with the Court.

10 The Parties may, by agreement, modify this sequence in the context of a particular
11 deposition as may be appropriate.

12 **2. Sequence of Examinations Noticed by Defendants**

13 **a. Depositions of Nongovernmental Witnesses**

14 If the deposition of a nongovernmental witness was noticed by a Defendant, the
15 questioning of the witness will be conducted in the following sequence: (i) the primary examiner
16 selected by Defendants; (ii) the examiner for the other Defendant; (iii) the examiner for the
17 United States; (iii) individual counsel for the witness, if any; (iv) the examiner selected by the
18 Plaintiffs' Steering Committee; and (v) any re-cross by Defendants' examiner(s), to the extent the
19 examiner(s) have not exceeded the time limitations set forth in Section III.G (Length of
20 Examination) of this Order.

21 **b. Depositions of Government Plaintiff Witnesses**

22 If the deposition of a governmental witness was noticed by a Defendant, the questioning
23 of the witness will be conducted in the following sequence: (i) the primary examiner selected by
24 Defendants; (ii) the examiner for the other Defendant; (iii) the examiner for the Plaintiffs'
25 Steering Committee; (iii) individual counsel for the witness, if any; (iv) the examiner for the
26 United States; and (v) any re-cross by Defendants' examiner(s), to the extent the examiner(s)
27 have not exceeded the time limitations set forth in Section III.G (Length of Examination) of this
28 Order.

3. Division of Time Among Plaintiffs' Counsel

The Plaintiffs' Steering Committee and counsel for the United States will work cooperatively with respect to the division of time.

4. Examinations of Non-Party Witnesses

The examination sequence of non-party witnesses shall presumptively follow the sequence specified by Section III.F.1 (Sequence of Examination Noticed by Plaintiffs) and Section III.F.2 (Sequence of Examination Noticed by Defendants) to accord examination priority to the Party that noticed the deposition. In circumstances where the presumptive sequence specified by Section III.F.1 or Section III.F.2 would either be unfair, inefficient, or otherwise contrary to Fed. R. Civ. P. 30(c), the Parties shall meet and confer concerning the appropriate sequence of examination to be followed. Failing agreement among the Parties, the matter shall be submitted to the Court for determination.

5. Documents Used at Depositions

a. Production of Documents

Documents responsive to document requests accompanying a deposition notice that relate to the deponent and/or the topics to be addressed in the noticed deposition shall be produced no later than fourteen (14) days prior to the deposition.

Rule 45 of the Federal Rules of Civil Procedure shall govern subpoenas directing third-party witnesses to produce documents.

b. Use of Foreign Language Documents at Depositions

Within thirty (30) days of the entry of this Order, the Parties shall meet and confer concerning a protocol for use of foreign language documents at depositions, including (i) whether to retain and, if so, the selection of a neutral translator to provide certified English translations of foreign language documents for use by the Parties at depositions; (ii) the allocation of fees and reasonable expenses of any such neutral translator; (iii) the challenge of document translations to be used at depositions; and (iv) any other matters relating to document translations and their use at depositions.

c. Copies of Documents

Extra copies of documents about which deposing counsel expects to examine a witness should be provided to counsel for the Parties and the witness during the course of the deposition. These may be distributed as hard-copies or USB flash drives containing the relevant documents.

G. Length of Examination

Except as set forth in the subsequent paragraph, or by agreement of the Parties or a Court order allowing additional time pursuant to Fed. R. Civ. P. 30(d)(1), the length of depositions conducted without an interpreter shall not exceed eight (8) hours of examination over one day. For depositions noticed by Plaintiffs, including Rule 30(b)(6) depositions, these eight (8) hours of examination shall not include examination by counsel for Defendants, Non-Parties, and the witness; for depositions noticed by Defendants, including Rule 30(b)(6) depositions, these eight (8) hours of examination shall not include examination by counsel for Plaintiffs, Non-Parties, and the witness.

For depositions noticed by Plaintiffs, including Rule 30(b)(6) depositions (subject to the provisions of Section III.C. herein), Plaintiffs may collectively take up to twelve (12) depositions of the FCA Defendants, ten (10) depositions of the Bosch Defendants, and eight (8) Non-Party depositions in which the length of each deposition shall not exceed ten (10) hours of examination over, subject to agreement of the witness and the parties participating in the deposition, either one or two days. The ten (10) hours of examination for these depositions shall not include examination by counsel for Defendants, Non-Parties, and the witness.

Notwithstanding the foregoing, if any Party or witness believes that the presumptive limitations for the duration of depositions imposed by Federal Rule of Civil Procedure 30(d)(1) should be imposed for a particular witness instead of the extended time limits permitted herein, or if any Party wishes to exceed the presumptive limitations for the depositions that this Order provides, counsel for the Party or witness shall meet and confer with Point Persons regarding the appropriate length of the deposition and, if the issue cannot be resolved through meet and confer negotiations, may seek judicial resolution.

Subject to the foregoing paragraphs, for Rule 30(b)(6) depositions conducted without an

1 interpreter, every eight (8) hours of examination of designated Rule 30(b)(6) witnesses shall
2 count as one deposition.

3 The Party noticing the deposition shall be entitled to a minute-for-minute re-cross
4 following any examination by counsel for the witness or the Party defending the deposition.

5 To the extent the Party defending the deposition reasonably anticipates that its questioning
6 of its own witness will exceed ninety minutes, it will provide notice at least ten (10) days before
7 the scheduled deposition, so arrangements can be made for the deposition to continue into an
8 additional day, if necessary; provided, however, that nothing about this provision shall be
9 interpreted to preclude any defending Party from questioning its own witness for the time that
10 Party may deem necessary. The Parties may, by agreement, modify this provision in the context
11 of a particular deposition as may be appropriate.

12 In the event that the deposition involves an interpreter, the Parties shall meet and confer to
13 determine the increase in the maximum length of the deposition in light of the procedures to be
14 employed for interpreting testimony. If the Parties are unable to agree on any additional time to
15 be allotted, the dispute shall be submitted promptly to the Court for resolution.

16 If it appears after coordination of time and sequencing as set forth above in Section III that
17 more or less time will be necessary, Point Persons and counsel for the witness shall meet and
18 confer to attempt to reach a reasonable accommodation.

19 **H. Deposition Locations and Space**

20 **1. Location for Depositions**

21 For those witnesses who reside or work in the United States, depositions will take place at
22 one of the following locations, at the election of the witness: (i) the offices of such witness's
23 attorney(s), (ii) a location in the district where the witness resides or works that can reasonably
24 accommodate the needs of the witness and counsel for the Parties, or (iii) another location that
25 Point Persons and the witness agree is reasonably convenient. The Parties will meet and confer
26 whether to designate certain locations at which the depositions should presumptively take place.

27 For those witnesses who reside outside of the United States, the depositions will take
28 place at a location to be agreed to by counsel for the Parties and the witness. In the event counsel

1 for the Parties and the witness are unable to reach agreement on the location of a deposition, the
2 noticing Party may notice the deposition in accordance with this Order, and the responding Party
3 or witness shall present the dispute regarding the deposition location for adjudication.

4 **2. Arrangements for Deposition Space**

5 Parties responsible for securing deposition space shall reserve an adequately-sized room,
6 and all counsel shall be provided with a separate room in which to confer during breaks. When
7 either Plaintiffs Steering Committee or any Defendant has secured the deposition space, that party
8 shall also make reasonable efforts to ensure the availability of reasonable access to the Internet
9 and basic office services, including but not limited to copy and fax machines without charge.

10 **I. Interpreters**

11 The Parties shall meet and confer concerning the circumstances warranting, and protocols
12 governing, the use of party-selected or neutral interpreters at depositions, including the
13 appropriate notice period, the number of interpreters, and allocation of costs and presumptive
14 effect on deposition duration which will result from the use of interpreters.

15 Any witness for whom English is not his or her first language may use an interpreter at
16 any deposition, at his or her sole election. Counsel for the witness or defending Party shall
17 promptly, but in any event no less than fourteen (14) days prior to the deposition, notify the Point
18 Persons if a witness has requested the use of an interpreter during a deposition, provided,
19 however, that counsel for the witness shall in all events be allowed at least seven (7) days
20 following service of the deposition notice to provide such notification.

21 **J. Objections and Instructions To Not Answer**

22 **1. Preservation of Objections**

23 All objections, except those as to form, manner of taking the deposition, notice, service,
24 and privilege, are reserved until trial or other use of the depositions. As soon as any one attorney
25 representing a Party states the word "objection," all Parties shall be deemed to have preserved all
26 possible objections to the form of the question or the responsiveness of the answer. Counsel for
27 other Parties should avoid repeating the objection. If an explanation for the basis of the objection
28 is requested, objecting counsel may reiterate the objection and explain.

2. Prohibition on Speaking Objections

2 Counsel shall comply with Fed. R. Civ. P. 30(c)(2) concerning objections at depositions.

3 Speaking objections or those calculated to coach the deponent are prohibited. Counsel shall
4 refrain from engaging in colloquy during depositions.

3. Objections to Documents

a. Objections to Relevance or Admissibility

7 Any objection to the relevance or admissibility of a document used as a deposition exhibit
8 is preserved for later ruling by the Court or by the trial judge. All Parties shall cooperate as
9 necessary so that the Court may issue a ruling on any objection to a document prior to trial.

b. Objections as to Authenticity

11 Any objection to the authenticity of an exhibit used in the deposition must be made by the
12 objecting Party within thirty (30) days of the deposition, or the exhibit will be deemed authentic.
13 If a Party subsequently becomes aware of information that an exhibit is not authentic, that Party
14 will promptly notify the Party that offered the exhibit. All Parties shall cooperate as necessary so
15 that the Court may issue a ruling on any objection to a document prior to trial.

16 This sub-Section shall not apply to any translations that are marked as exhibits.

4. Instructions Not To Answer

18 Counsel may instruct a witness not to answer when necessary to preserve an applicable
19 privilege or protection, such as the attorney-client privilege and the attorney work product
20 doctrine, to enforce a limitation ordered by the Court, or to present a motion under Fed. R. Civ. P.
21 30(d)(3). When a privilege is claimed, to the extent a witness is able to answer questions relevant
22 to the existence, extent, or waiver of the privilege (such as the date of a communication, who
23 made the statement, to whom and in whose presence the statement was made, other persons to
24 whom the contents of the statement have been disclosed, and such other information as may be
25 necessary to determine the nature of the purportedly privileged communication), without waiving
26 the privilege, the witness should do so. Unless otherwise specified, an instruction not to answer
27 by one Defendant should not be deemed an instruction not to answer by all Defendants, and an
28 instruction not to answer by one Plaintiff shall not be deemed an instruction not to answer by all

1 Plaintiffs. Nothing herein is meant to modify the requirements of Paragraph I.K. of Pretrial Order
2 No: __ Stipulation Relating to Non-Waiver of Privileges and Production of Privilege Logs
3 (relating, in part, to instructions not to answer regarding possible Privileged Material used at a
4 deposition).

5 **K. Disputes During Depositions**

6 Disputes between the Parties should be addressed to this Court rather than the district
7 court in the district in which the deposition is being conducted. Disputes arising during
8 depositions that cannot be resolved by agreement and that, if not immediately resolved, will
9 significantly disrupt the discovery schedule or require rescheduling of the deposition, or might
10 result in the need to conduct a supplemental deposition, shall be presented to the Court, and if the
11 Court is not available, and to the extent the Parties are still unable to resolve the dispute, the
12 deposition shall continue as to matters not in dispute with full reservation of rights for a ruling at
13 the earliest possible time. If the nature of the dispute would not stop the deposition from going
14 forward, the Parties may agree among themselves either to present the matter to the Court by
15 telephone, or to present the dispute in writing. The deposition reporter shall make a transcript of
16 the conference call proceedings, which shall be transcribed immediately and bound separately. In
17 the event the Court is unavailable by telephone to resolve disputes arising during the course of the
18 deposition, the deposition shall nevertheless continue to be taken as to matters not in dispute.
19 Nothing in this Order shall deny counsel the right to (1) suspend a deposition pursuant to Fed. R.
20 Civ. P. 30(d)(3); or (2) file an appropriate motion with the Court after the deposition, and appear
21 personally before the Court.

22 **L. Video Depositions**

23 By so indicating in its notice of a deposition, a Party, at its expense, may record a
24 deposition by videotape or digitally-recorded video pursuant to Fed. R. Civ. P. 30(b)(3) subject to
25 the following rules:

26 1. **Real-Time Feed** - All video depositions will be recorded stenographically by a
27 court reporter with “real-time feed” transcription capabilities. Nothing herein precludes any
28 Party from ordering “real-time feed” for any non-video deposition.

1 2. **Video Operator** - The operator(s) of the video recording equipment shall be
2 subject to the provisions of Fed. R. Civ. P. 28(c). At the commencement of the deposition, the
3 operator(s) shall swear or affirm to record the proceedings fairly and accurately.

4 3. **Attendance** - Each witness, attorney and other person attending the deposition
5 shall be identified on the record at the commencement of the deposition.

6 4. **Filing** - The operator shall preserve custody of the original video medium (tape or
7 DVD) in its original condition until further order of the Court.

8 5. **Interruptions** - The video camera operation will be suspended during the
9 deposition only upon stipulation by counsel and "off-the-record" discussions.

10 6. **Filming** - The videographer shall film the witness only while the witness is seated
11 in the witness chair and shall not film the witness at any other time, including when entering or
12 leaving the deposition room. The videographer shall not film any persons in the room, except for
13 the witness.

14 **M. Correction and Signing of Depositions**

15 Within thirty (30) days after the deposition is completed, unless expressly waived by the
16 witness, a transcript of the deposition shall be provided to the witness for correction and
17 signature. For any witness residing in the United States, the deposition may be signed before any
18 notary or certified under penalty of perjury within thirty (30) days after the date that the transcript
19 is received by counsel for the witness. For any witness residing outside of the United States, the
20 deposition may be signed before any notary or certified under penalty of perjury within sixty (60)
21 days after the date that the transcript is received by counsel for the witness. If no corrections are
22 made during this time, then, absent any agreement to extend these deadlines, the transcript will be
23 presumed accurate. The Parties may agree to reasonable extensions of these deadlines.

24 **N. Cost of Deposition**

25 The noticing Party shall bear the initial expenses of stenographic recording and
26 videotaping (as appropriate), and any costs associated with securing appropriate deposition space.
27 The Parties shall pay for their own copies of transcripts and videotapes/DVDs of depositions.
28 The Parties shall confer to determine whether it is appropriate to retain a dedicated court-

reporting firm to record all depositions.

O. Use of Depositions

Depositions may, to the extent authorized by the Federal Rules of Civil Procedure or the Federal Rules of Evidence, be used by or against any Party.

P. Witness Claim to Alternate Procedures

To the extent that any Party anticipates a witness asserting that applicable law requires a procedure other than that set forth herein or under the Federal Rules of Civil Procedure, the Party aware of the issue shall promptly notify all other Parties in writing. The Parties shall thereafter meet and confer in an effort to timely resolve the matter among the Parties so as to minimize any disruption to the scheduling of the deposition. To the extent the Parties are unable to resolve the issue, the matter shall be promptly presented for judicial resolution.

SO STIPULATED.

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

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Plaintiffs' Lead Counsel and Chair of the Plaintiffs' Steering Committee

1 DATED: October 27, 2017

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UNITED STATES DEPARTMENT OF JUSTICE

By: /s/ Leigh P. Rendé
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ATTESTATION (CIVIL LOCAL RULE 5-1(i)(3))

In accordance with Civil Local Rule 5-1(i)(3), I attest the concurrence in the filing of this document has been obtained from the signatories.

Dated: October 27, 2017

/s/ Elizabeth J. Cabraser
Elizabeth J. Cabraser

PURSUANT TO STIPULATION, IT IS SO ORDERED.

November 3, 2017

DATED: _____

~~EDWARD M. CHEN~~
United States District Judge

IT IS SO ORDERED

Judge Edward M. Chen

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 27, 2017, a true and correct copy of the foregoing was electronically filed and served electronically via the Court's CM/ECF system, which will automatically serve notice to all registered counsel of record.

By: /s/ *Elizabeth J. Cabraser*
Elizabeth J. Cabraser